

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Glenn S. Horen, et al.,

Case No. 3:07CV3779

Plaintiff

v.

ORDER

Board of Education of
Toledo Public School District, et al. ,

Defendant

Board of Education of
the Toledo City School District,
Plaintiff

Case No. 3:07CV3631

v.

ORDER

Joanne E. Horen, et al.,

Defendant

These cases involve claims that a pupil enrolled in the Toledo public schools ["School Board"] is entitled to services under the Individuals With Disabilities Education Act [IDEA], 20 U.S.C. § 1401, et. seq. The parents filed Case No. 3:07CV3779 ["Case '779"] in the Lucas County, Ohio, Court of Common Pleas. The School Board removed the case here. Plaintiffs have filed a motion to remand ['779 Case Doc. 7], which the School Board opposes.

The School Board filed case 3:07CV3631 ["Case '631"] as an appeal from state administrative decisions favoring the parents' child. The parents have filed a motion to dismiss the School Board's lawsuit on the basis of untimeliness. [Case '361 Doc. 6].

For the reasons that follow, the parents' motion to dismiss Case '361 shall be denied. In addition, their motion for remand in Case '790 shall likewise be denied.¹

Turning to the parents' motion to dismiss in Case '361, the School Board contends that the parents' motion relies on regulatory provisions that have been superceded. The parents have not replied to this argument, which appears, in any event, well taken. Their motion to dismiss shall, accordingly, be overruled.

I likewise find no merit in the parents' contention that the School Board improperly removed Case '779. The Board has conclusively shown that the parents' representations about the overlap or congruity of this case and another suit pending in the Lucas County Court of Common Pleas are not well-taken. This case belongs here and shall stay here, as the School Board contends.

It is, therefore,

ORDERED THAT:

1. Case No. 3:07CV3779 be, and the same hereby is consolidated *sua sponte* pending further court order with Case No. 3:07CV3631;
2. The defendant parents' motion to dismiss Case No. 3:07CV3631 be, and the same hereby is denied;
3. The plaintiffs' motion to remand Case No. 3:07CV3779 be, and the same hereby is denied;
4. Further proceedings are stayed, pending further Court Order, except such discovery as the parties shall agree upon.

¹ The parents have also filed a "Motion to Void Notice" [Case '631 Doc. 10], complaining about defects in service. The State Board of Education, a defendant in Case '779, has filed a motion to dismiss the parents' complaint against it in that case. [Case '779 Doc. 9]. Further proceedings as to these motions and otherwise shall be stayed in both cases pending a case management conference, which the Clerk shall set forthwith.

5. A case management conferences in these cases is set for March 3, 2008 at 1:00 p.m. Prose parties to appear in person; out of town counsel may participate by phone.

So ordered.

s/James G. Carr
James G. Carr
Chief Judge